

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5150 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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PRECISION METAL SLITTERS PVT LTD

Versus

UNION OF INDIA  
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Appearance:

M/S TRIVEDI & GUPTA for Petitioners  
MR M R SHAH for Respondent No. 1  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE C.K.BUCH

Date of decision: 22/07/1999

ORAL JUDGEMENT

Rule. Mr . M.R.Shah appears and waives service of Rule  
on behalf of respondent No.1. In the facts and  
circumstances of the case, the matter is taken up for

final hearing today.

This petition is filed against stay order No. 366 of 1999 passed by the Commissioner (Appeals), Vadodara on May 25, 1999.

Being aggrieved by an order-in-original passed by the Assistant Commissioner (T), Central Excise and Customs, Vadodara, the petitioner has filed an appeal before the appellate authority. The said appeal is pending.

Alongwith appeal, stay application was also made and an order was passed on May 25, 1999. In the operative part of the order, it is stated:

"In the circumstances stated above, I direct the appellants to deposit Rs. 5,68,000/- as pre deposit under Section 35F of the Central Excise Act, 1944 within 2 weeks from the date of receipt of this order and report compliance within 3 weeks, failing which this appeal, is liable to be dismissed. On compliance, there shall be stay and waiver of predeposit of remaining amount of duty/ penalty till final disposal of the appeal.

The stay application in the subject appeal is accordingly disposed of."

Learned counsel for the petitioner contended that a hyper technical view has been taken by the appellate authority inasmuch as though in accordance with law, the petitioner could have availed of Modvat facility, the petitioner is called upon to make pre-deposit of Rs. 5,68,000/- under Section 35F of the Act within stipulated period. He submitted that as per settled law, such hyper technical view should not have been taken and the petitioner has good chance and his appeal is likely to be allowed.

Mr. Shah, learned counsel on the other hand, submitted that attention that the order is a speaking order and reasons have been recorded. He also submitted that before passing the order in original, the authority has issued show cause notice and afforded personal hearing. At earlier point, when personal hearing was fixed, the petitioner prayed for time which was granted. But even at the next hearing, the petitioner did not remain present. Considering the facts and circumstances of the

case, in light of the record of the case, the authority passed the order which is subject matter of appeal. He also stated that in respect of one matter, proceedings were dropped. In the instant case, the order was passed directing the petitioner to make deposit. The appellate authority has passed the order partly granting relief during the pendency of the appeal and directed him to make payment of Rs. 5,68,000/- . Such order cannot be said to be arbitrary or unreasonable and when this Court is exercising powers under Article 226 of the Constitution, this is not a fit case to interfere with the said order.

In the facts and circumstances of the case, it cannot be said that the order passed in stay application is a non-speaking order. So far as legal submissions are concerned, the appellate authority will consider all the questions including the points sought to be argued before us. Therefore, it cannot be said that the order of pre-deposit of Rs. 5,68,000/- could not have been made by the appellate authority.

For the foregoing reasons, we do not see any reason to interfere with the order passed by the appellate authority in stay order on May 25, 1999. It was, however stated that the petitioner is in financial constraints and some more time may be granted. The amount as directed by the appellate authority in the stay order will be paid in any permissible mode by the petitioner on or before August 31, 1999. Appeal will not be dismissed till then but it will be heard only after the payment is made. If payment is not made within the stipulated time, it is open to the appellate authority to pass appropriate order in accordance with law. Rule is made absolute to the aforesaid extent. No order as to costs.

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parekh